No. 14,993

IN THE

United States Court of Appeals

For the Ninth Circuit

WILLIAM BERRYHILL,
Appellant,

vs.

PACIFIC FAR EAST LINE, INC.,
a Corporation,
Appellee.

Appeal from the United States District Court for the Northern District of California, Southern Division.

REPLY BRIEF OF APPELLANT.

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THE WARRANTY OF SEAWORTHINESS APPLIES TO SHIP REPAIRMEN.

The shipowner's warranty of seaworthiness extends to all who work in the service of and aboard a vessel with the shipowner's consent or by his arrangement. This is true, regardless of the job classification of the particular worker, or the nature of his work. Appellee suggests that only repairmen who perform "minor" repairs in connection with the loading operation of the vessel are entitled to the warranty of

seaworthiness. Cases cited by appellee do not warrant the making of any such distinction.

The pleadings before the Court, the interrogatories propounded by appellee and answered by appellant, will be searched in vain for any evidence that the work performed in this case was either a "major" or "minor" job. Even assuming, *arguendo,* that the instant repairs could be described as a "major" repair, such a repair is as important to the vessel's business of carrying cargo and for the security of life at sea as are "minor" repairs.

Read v. United States, 201 F. 2d 758 (CA-3, 1953), was an action in admiralty against a vessel owner for damages for personal injuries sustained by an employee of an independent repair contractor. The respondent vessel owner in the *Read* case contracted for the conversion of a merchant vessel to a troop carrier. The independent contractor was to perform the necessary repair and conversion tasks. Under the agreement, the contractor was obligated to provide suitable lighting for the work. Libelant, who was employed by the independent contractor as a ship repairman, and in the course of his work of converting salt water ballast tanks into fresh water ballast tanks was injured when he fell into a hold as a result of insufficient lighting in the work area.

In concluding that the shipowner had breached its nondelegable warranty of seaworthiness, the Court stated at page 761:

> "In our view, it is unnecessary to discuss the issue of negligence on the part of the vessel

because, irrespective of that issue liability may be predicated on the ground of unseaworthiness. It has been settled law since *The Osceola,* 1903, 189 U.S. 158, 23 S.Ct. 483, 47 L.Ed. 760, 'That the vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, *or a failure to supply and keep in order the proper appliances appurtenant to the ship.*' 189 U.S. at page 175, 23 S.Ct. at page 487 (emphasis supplied). *Carlisle Packing Co. v. Sandanger,* 1922, 259 U.S. 255, 259, 42 S.Ct. 475, 66 L.Ed. 927; *The Arizona v. Anelich,* 1936, 298 U.S. 110, 56 S.Ct. 707, 80 L.Ed. 1075; *Mahnich v. Southern S. S. Co.,* 1944, 321 U.S. 96, 64 S.Ct. 455, 88 L.Ed. 561. In *Seas Shipping Co. v. Sieracki,* 1946, 328 U.S. 85, at page 94, 66 S.Ct. 872, at page 877, 90 L.Ed. 1099, it was held that the warranty of seaworthiness '. . . is essentially a species of liability without fault . . . and such liability ". . . is neither limited by conceptions of negligence nor contractual in nature. . . . It is a form of absolute duty owing to all within the range of its humanitarian policy." '

"The *Sieracki case* also specifically stated that the vessel's obligation of seaworthiness extends to stevedores while working aboard the ship. In *Hawn v. Pope & Talbot, Inc.,* 3 Cir., 1952, 198 F. 2d 800, we held that the vessel's liability for unseaworthiness extended to a carpenter employed by one having a contract to repair the ship—as in the instant case."

WHETHER OR NOT A TOOL OR APPLIANCE IS ONE WHICH IS APPURTENANT TO A SHIP IS A FACTUAL QUESTION.

The grinder and grinding wheel used by appellant was of a type commonly furnished vessels by ship chandlers. A merchant vessel is a complex mechanical object requiring specialized tools, including grinders and grinding wheels, to maintain, manage, repair and operate. Such tools and equipment used by employees of independent contractors engaged in performing work for and on the vessel are warranted seaworthy by the vessel owner, regardless of the fact that they were furnished in the first instance by the independent contracting employer. *Petterson v. Alaska Steamship Co.,* 205 F. 2d 478 (CA-9, 1953), affirmed, 347 U.S. 396 (1954). The case of *Fredericks v. American Export Lines,* 227 F. 2d 450 (CA-2, 1955), cited by appellee in its brief, involved an injury to a longshoreman, who was hurt while standing on a pier as a result of the failure of a defective appliance *located on the pier* and furnished by his employer, an independent contractor. No evidence was presented at the trial to show that the appliance itself was of a type customarily found and used aboard ships so as to be considered appurtenant thereto.

Appellee urges that appellant's answer to appellee's interrogatory No. 2 (Tr. 17) was an admission that grinders and grinding wheels are not equipment customarily appurtenant to a vessel. That is not true. The only inference to be drawn by the answer to the interrogatory is, that the particular grinder involved was not directly furnished by the shipowner. At the

time of trial, appellant will establish that the defective equipment used by appellant in performing his work in the service of the vessel, and at the vessel owner's request, was of the type ordinarily and customarily found aboard vessels and used for purposes similar to that performed by appellant at the time he was injured.

Dated, San Francisco, California,
July 2, 1956.

Respectfully submitted,
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